

**McKenna Long
& Aldridge, LLP**

Attorneys at Law

Los Angeles,
Philadelphia303 Peachtree Street, NE • Suite 5300 • Atlanta, GA 30308
Tel: 404.527.4000 • Fax: 404.527.4198
www.mckennalong.comSan Diego
San Francisco
Washington, DC
Brussels**FACSIMILE TRANSMITTAL**

Date: July 23, 2004

To: Name/Company	Fax No.	Phone No.
Examiner Garg United States Patent and Trademark Office	703 746 7390	

From: Kurt M. Eaton
 Phone: (619) 595-8039
 Re: U.S. Patent Application No. 09/373.576

Second Attempt

Number of Pages (including cover): 24**COMMENTS**

Confidentiality Notice:
 The information contained in this facsimile is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this telecopy is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone and return the original message to us at the address above via the United States Post Office. Thank you.

User No.: 0704

Client/Matter No.: 6945.035.00

Atty Docket No.: 6945.035.00-US

Inventor: J. K. Kelly et al.

Application No.: 09/373,576-Conf. #2727 Filing Date: August 13, 1999

Title: GARDEN AND AGRICULTURAL MATERIAL IDENTIFICATION
METHOD AND APPARATUS

Documents Filed:

Transmittal Form (1 page)

Supplemental Appellant's Brief (in triplicate; 19X3=57 pages)
Duplicate of page 14 authorizing additional charges to deposit account 50-0911 (in triplicate;
3 pages)



Via: PTO Daily Run

Sender's Initials: RGR/KME/eem

Date: July 20, 2004

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

		Application Number	09/373,576
		Filing Date	August 13, 1999
		First Named Inventor	J. K. Kelly
		Art Unit	3625
		Examiner Name	Y. C. Garg
Total Number of Pages in This Submission	1	Attorney Docket Number	6945.035.00

ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) (Supplemental Appellant's Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Kurt M. Eaton
Signature	
Date	July 20, 2004

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>		Application Number 09/373,576
		Filing Date August 13, 1999
		First Named Inventor J. K. Kelly
		Art Unit 3625
		Examiner Name Y. C. Garg
Total Number of Pages in This Submission	1	Attorney Docket Number 6945.035.00

ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) /Supplemental Appellant's Brief <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Kurt M. Eaton
Signature	
Date	July 20, 2004

PATENT
6945.035.00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re application of

Confirmation No: 2727

J. K. KELLY, et al.

Group Art Unit: 3625

Application No.: 09/373,576

Examiner: Y. GARG

Filed: August 13, 1999

Customer No.: 30827

For: **GARDEN AND AGRICULTURAL MATERIAL IDENTIFICATION
METHOD AND APPARATUS**

SUPPLEMENTAL APPELLANT'S BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to a Final Rejection of all pending claims that was mailed on October 7, 2003, and an Advisory Action that was mailed on February 19, 2004, and in support of a "Notice of Appeal" filed on March 3, 2004, Appellant hereby submits this Appeal Brief.

The fees required under § 1.17(f) and any required petition for extension of time for filing this brief and fees therefore are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief is transmitted in triplicate.

This brief contains items under the following headings as required by 37 C.F.R. §

1.192 and M.P.E.P. § 1206:

- I. Real Party In Interest
- II Related Appeals and Interferences
- III. Status of Claims

Application No.: 09/373,576
Group Art Unit: 3625

Docket No.: 6945.035.00
Supplemental Appellant's Brief filed July 20, 2004
Page 2 of 19

- IV. Status of Amendments**
- V. Summary of Invention**
- VI. Issues**
- VII. Grouping of Claims**
- VIII. Arguments**
- IX. Claims Involved in the Appeal**

Appendix A Claims

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

GARDENING123.COM, INC.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

Total Number of Claims in the Application

There are 29 claims pending in the application.

Current Status of Claims

Claims canceled: 17

Claims withdrawn from consideration but not canceled: N/A

Claims pending: 1-16 and 18-30

Claims allowed: N/A

Claims rejected: 1-16 and 18-30

Claims On Appeal: The claims on appeal are claims 1-16 and 18-30.

IV. STATUS OF AMENDMENTS

In a Preliminary Amendment filed with a Request for Continued Examination on January 10, 2003, claims 1-16 and 18-25 were amended, claim 17 was canceled, and claims 26-30 were added. The Examiner issued a Final Rejection on October 7, 2003, based on the claims presented as of January 10, 2003. The claims were not amended after the Final Rejection.

Accordingly, the claims enclosed herein as Appendix A reflect the amended claims 1-16 and 18-25 and claims 26-30, added in the amendment filed January 10, 2003.

V. SUMMARY OF INVENTION

The present invention relates generally to the field of gardening and agriculture and more particularly to a method and apparatus for identifying an appropriate gardening or agricultural material based on responses to user queries (see specification at, for example, page 7, lines 15-17). The queries allow a gardener to specify the type of area (e.g., lawn, garden, etc.) in which a problem exists (see specification at, for example, page 5, lines 8-10); the type of problem (e.g., insect, fungus, characteristics of the problem, etc.) (see specification at, for example, page 5, lines 10-11, 16-20); and the geographic location of the problem (see specification at, for example, page 5, lines 4-8). The geographic location may be specified by zip code, state, region of the country, or any combination thereof (see specification at, for example, page 7, lines 4-14). The ability to specify geographic location by state is especially helpful when choosing gardening materials such as pesticides, fertilizers and lawn seeds because such materials are regulated by state. A pesticide that is legal in one state may not be legal in the next. Even if a pesticide is legal in a state, it may not be legal

for all applications. Specifying a location by both state and region is useful for large states with relatively large climactic variation.

Once the appropriate user responses have been obtained, appropriate garden materials are identified to the user.

VI. ISSUES

The first issue is whether the Examiner properly rejected claims 1, 2, 4, 8-11, 13-15, 21-24, and 26 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. (U.S. Pat. No. 6,477,531) in view of Gerland et al. ("Taking A Spade To The Web") and National Gardening ("National Gardening Association Home Page", extracted from the Internet on 1/16/02).

The second issue is whether the Examiner properly rejected claims 3 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening.

The third issue is whether the Examiner properly rejected claims 5-7, 18-20, and 28-30 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening and further in view of Sturgeon et al. (U.S. Pat. No. 5,726,884).

The fourth issue is whether the Examiner properly rejected claims 12 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening.

The fifth issue is whether the Examiner properly rejected claim 27 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al., National Gardening, and an "Official Notice".

VII. GROUPING OF CLAIMS

For purposes of this appeal brief only, and without conceding the teachings of any prior art reference, the claims have been grouped as indicated below:

Group/Claim(s)

- A. Independent claim 1, and claims 2-12 which depend from claim 1;
- B. Independent claim 13, and claims 14-16 and 18-25, which depend from claim 13; and
- C. Independent claim 26, and claims 27-30, which depend from claim 26.

It is respectfully submitted that the claims of groups A, B, and C stand or fall together.

VIII. ARGUMENTS

- A. The Examiner improperly rejected claims 1, 2, 4, 8-11, 13-15, 21-24, and 26 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening.

Independent claim 1 is allowable over Sullivan et al. in view of Gerland et al. and National Gardening in that claim 1 recites a combination of elements including, for example, "querying a user for at least one geographic region; receiving the at least one geographic region from the user; querying the user for the location of a gardening problem within said geographic region; receiving the at least one gardening problem from the user; querying the database and generating a series of questions in response to the received at least one gardening problem; receiving a response to the series of questions from the user; querying the database and identifying at least one gardening material based upon a response to at least one of the querying."

Independent claim 13 is allowable over Sullivan et al. in view of Gerland et al. and National Gardening in that claim 13 recites a combination of elements including, for example, "presenting a user with at least one inquiry... identifying at least one gardening material based upon a response to said inquiry; wherein at least one inquiry is directed toward the user's geographic region and the at least one gardening material is identified based at least partially upon the user's geographic region."

Independent claim 26 is allowable over Sullivan et al. in view of Gerland et al. and National Gardening in that claim 26 recites a combination of elements including, for example, "querying a user for a geographic region in which the garden material is to be utilized; receiving the geographic region from the user; querying the user for an object affected by the gardening problem... receiving the object affected by the gardening problem from the user; querying the user for a type of gardening problem... receiving the type of gardening problem from the user; determining whether the type of gardening problem is a pest problem, a fertilizer need problem, or information pertaining to seeds; and generating a list of products based partially upon the geographic region."

According to M.P.E.P. § 2143.01, a *prima facie* case of obviousness of a claimed invention is established only when there is some suggestion or motivation, either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. If the proposed modification would render the reference being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Moreover, if the proposed modification of the applied reference would change the principle of operation of the reference being modified, then the

teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). In short, a *prima facie* case of obviousness cannot be established without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993).

In rejecting claims 1, 2, 4, 8-11, 13-15, 21-24, and 26, the Examiner cites Sullivan et al. as teaching "presenting the user with at least one query directed towards the symptoms of a problem observed by the user and identifying a solution based at least partially upon the user's responses to the inquiry..." and acknowledges that Sullivan et al. fails to teach "that the problems/information required are related to gardening material." The Examiner then cites Gerland et al. as teaching "that gardening websites exist which carry out business related to resolving gardening problems" and concludes it would have been obvious to modify Sullivan et al. using Gerland et al. "to include the features of gardening sites such as resolving gardening problems... [because] doing so would enable customers to use Sullivan's method and system to resolve gardening problems."

When applying 35 U.S.C. § 103, the subject matter of claimed invention, as well as of the applied references, must be considered as a whole. See M.P.E.P. § 2141.02. However, distilling an invention down to the "gist" or "thrust" of an invention disregards the requirement of analyzing the subject matter "as a whole." *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert denied*, 469 U.S. 851 (1984).

Assuming *arguendo* Sullivan et al. may be interpreted, within some contexts, to disclose "a method and a support system to help customers with problems, diagnosing the problems and then offering a solution" and "presenting the user with at least one query

directed towards the symptoms of a problem observed by the user and identifying a solution based at least partially upon the user's responses to the inquiry," such an interpretation is impermissible within the context of formulating an obviousness rejection as it constitutes a generalized, distilled summary that disregards the actual teachings of Sullivan et al.

Undistilled, Sullivan et al. provides a method and a support system to help customers with hardware or software problems that users and/or customers encounter as they use computers (see, Sullivan et al., column 1, lines 12-15, 46-67; and column 2, lines 1-6). Specifically, the invention of Sullivan et al. is apparently advantageous over the conventional methods and support systems because "the inventive functionality captures live context of the user's running system and dynamically guides the user to the appropriate subset of relevant active content (see Sullivan et al., column 11, lines 22-26). Referring to Figure 7 of Sullivan et al., this is accomplished through the use of a diagnostic map that "executes on the client machine," wherein "the diagnostic map examines the client system (including the existing applications, registry information and the like) and communicates with the technical support server to derive the search string [90] as a background task... with user input" (see Sullivan et al., column 9, lines 21-31). In view of the actual teachings of Sullivan et al. highlighted above, Appellant respectfully submits that the problems solved by Sullivan et al. must be computer related and, more specifically, must be existent on the user's actual computer.

It is respectfully submitted that gardening problems or materials do not exist within "client systems" (including applications, registry information and the like), as disclosed by Sullivan et al. Given that the problems of Sullivan et al. must be existent on a user's computer, Appellant respectfully submits that any modification of Sullivan et al. using the teachings of Gerland et al. would not only render Sullivan et al. unsatisfactory for its intended

purpose but also change the principle of operation of Sullivan et al. Lastly, Appellants respectfully submit that proffered reason to modify Sullivan et al. with Gerland et al. (allegedly teaching that gardening websites exist which... [resolve] gardening problems), i.e., that "doing so would enable customers to use Sullivan's method and system to resolve gardening problems," is not a reason -- it is a conclusion. As such, the Examiner has failed to set forth any suggestion or motivation to modify Sullivan et al. with Gerland et al. Absent any objective reason to modify Sullivan et al. with Gerland et al., Appellants contend Sullivan et al. has only been modified by Gerland et al. with the benefit of Appellants' disclosure via impermissible hindsight reasoning.

In continuing the rejection of claims 1, 2, 4, 8-11, 13-15, 21-24, and 26 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening, the Examiner acknowledges that Sullivan et al., as modified by Gerland et al., "does not disclose that the processor queries the user about a geographic region and the user furnishes the same information to the processor." Attempting to cure the deficiency of Sullivan et al. in view of Gerland et al., the Examiner cites National Gardening as allegedly teaching "that the user informs the processor a geographic location when queried by the process for the same (see page 1, "Selecting a region") and processor provides gardening information as relevant to that geographic location." The Examiner concludes that it would have been obvious to modify "Sullivan/Gerland to include the feature of user informing a geographical region upon being prompted by the processor... [because] doing so helps the processor respond with relevant information... [to that] region only."

For similar reasons set forth above, Appellants respectfully submit that the proffered reason to modify Sullivan et al. in view of Gerland et al. with National Gardening (allegedly

teaching wherein a user informs a processor of a geographic location...), i.e., that "doing so helps the processor respond with relevant information... [to that] region only," is not a reason -- it is a conclusion. As such, the Examiner has failed to set forth any suggestion or motivation to modify Sullivan et al. in view of Gerland et al. with National Gardening. Absent any objective reason to modify Sullivan et al. in view of Gerland et al. with National Gardening, Appellants contend the applied references have merely been combined with the benefit of Appellants' disclosure via impermissible hindsight reasoning.

For at least the reasons set forth above, Appellants respectfully request withdrawal of the present rejection of claims in Groups A, B, and C under 35 U.S.C. § 103(a).

Lastly, all the claim elements must be taught or suggested by the applied references to establish *prima facie* obviousness of the claimed invention. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1970). All words in a claim must be considered in judging the patentability of that claim against the applied references. *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Even if the cited references, i.e., Sullivan et al., Gerland et al., and National Gardening, each disclose what they are alleged to disclose, and even if the cited references are properly combinable as asserted by the Examiner, it is respectfully submitted that the combination cited references fails to teach or suggest each and every element as set forth at least in claims 1, 13, and 26.

For example, none of the cited references teaches or suggests "querying the database and identifying at least one gardening material based upon a response to at least one of the querying," as recited in claim 1, "wherein at least one inquiry is directed toward the user's geographic region and the at least one gardening material is identified based at least partially

upon the user's geographic region," as recited in claim 13, and "querying the user for a type of gardening problem... determining whether the type of gardening problem is a pest problem, fertilizer need problem, or information pertaining to seeds; and generating a list of products based partially upon the geographic region," as recited in claim 26.

For at least the reasons set forth above, Appellants respectfully request withdrawal of the present rejection of claims in Groups A, B, and C under 35 U.S.C. § 103(a).

B. The Examiner improperly rejected claims 3 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening.

Claims 3 and 16 include all of the elements of claims 1 and 13, respectively, as discussed above. Accordingly, Appellants respectfully submit that claims 3 and 16 are allowable by virtue of their dependence from claims 1 and 13.

C. The Examiner improperly rejected claims 5-7, 18-20, and 28-30 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening and further in view of Sturgeon et al. (U.S. Pat. No. 5,726,884).

Preliminarily, Appellants note that while the opening sentence of the present rejection stated claims 5-7, 18-20, and 28-30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening and further in view of Sturgeon et al., claims 4 and 17 were also rejected within the body of the rejection.

For purposes of expediting prosecution, Appellants hereby assume claims 4 and 17 were intended to be included within the opening sentence of the present rejection.

Claims 4-7 include all of the elements of claim 1, as discussed above, and Sullivan et al. in view of Gerland et al. and National Gardening fails to teach or suggest at least the features of independent claim 1 as recited above. Similarly, Sturgeon et al. fails to cure the deficiencies of Sullivan et al. in view of Gerland et al. and National Gardening. Accordingly, Appellants respectfully submits that the Examiner has not established a *prima facie* case of obviousness regarding claims 4-7 in view of claim 1, as above.

Claims 17-20 include all of the elements of claim 13, as discussed above, and Sullivan et al. in view of Gerland et al. and National Gardening fails to teach or suggest at least the features of independent claim 13 as recited above. Similarly, Sturgeon et al. fails to cure the deficiencies of Sullivan et al. in view of Gerland et al. and National Gardening. Accordingly, Appellants respectfully submits that the Examiner has not established a *prima facie* case of obviousness regarding claims 17-20 in view of claim 13, as above.

Claims 28-30 include all of the elements of claim 26, as discussed above, and Sullivan et al. in view of Gerland et al. and National Gardening fails to teach or suggest at least the features of independent claim 26 as recited above. Similarly, Sturgeon et al. fails to cure the deficiencies of Sullivan et al. in view of Gerland et al. and National Gardening. Accordingly, Appellants respectfully submits that the Examiner has not established a *prima facie* case of obviousness regarding claims 28-30 in view of claim 26, as above.

D. The Examiner improperly rejected claims 12 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al. and National Gardening.

Claims 12 and 25 include all of the elements of claims 1 and 13, respectively, as discussed above. Accordingly, Appellants respectfully submit claims 12 and 25 are allowable by virtue of their dependence from claims 1 and 13, respectively.

E. The Examiner improperly rejected claim 27 under 35 U.S.C. § 103(a) as being unpatentable over Sullivan et al. in view of Gerland et al., National Gardening, and an "Official Notice".

Claim 27 includes all of the elements of claim 26 as discussed above. Accordingly, Appellants respectfully submit claim 27 is allowable by virtue of its dependence from claim 26.

Application No.: 09/373,576
Group Art Unit: 3625

Docket No.: 6945.035.00
Supplemental Appellant's Brief filed July 20, 2004
Page 14 of 19

IX. CLAIMS INVOLVED IN THE APPEAL

A copy of the claims involved in the present appeal is attached hereto as Appendix A.

If the Examiner deems that a telephone conversation would further the prosecution of this application, the Examiner is invited to call the undersigned at (202) 496-7500.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. §1.136, and any additional fees required under 37 C.F.R. §1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to deposit Account No. 50-0911. A duplicate copy of this sheet is enclosed.

Dated: July 20, 2004

Respectfully submitted,

By Kurt M. Eaton, Esq. Reg. No. 41,786
Kurt M. Eaton

Registration No.: 51,640
MCKENNA LONG & ALDRIDGE LLP
1900 K Street, N.W.
Washington, DC 20006
(202) 496-7500
Attorneys for Appellant

Application No.: 09/373,576
Group Art Unit: 3625

Docket No.: 6945.035.00
Supplemental Appellant's Brief filed July 20, 2004
Page 14 of 19

IX. CLAIMS INVOLVED IN THE APPEAL

A copy of the claims involved in the present appeal is attached hereto as Appendix A.

If the Examiner deems that a telephone conversation would further the prosecution of this application, the Examiner is invited to call the undersigned at (202) 496-7500.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. §1.136, and any additional fees required under 37 C.F.R. §1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to deposit Account No. 50-0911. A duplicate copy of this sheet is enclosed.

Dated: July 20, 2004

Respectfully submitted,

By Kurt M. Eaton Reg. No. 4,786

Kurt M. Eaton
Registration No.: 51,640
MCKENNA LONG & ALDRIDGE LLP
1900 K Street, N.W.
Washington, DC 20006
(202) 496-7500
Attorneys for Appellant

APPENDIX A

Claims Involved in the Appeal of Application Serial No. 09/373,576

1. (Previously Presented) A method for identifying a gardening material comprising:
querying a user for at least one geographic region;
receiving the at least one geographic region from the user;
querying the user for the location of a gardening problem within said geographic region;
receiving the at least one gardening problem from the user;
querying database and generating a series of questions in response to the received at least one gardening problem;
receiving a response to the series of questions from the user;
querying the database and identifying at least one gardening material based upon a response to at least one of the querying.
2. (Previously Presented) The method of claim 1, further comprising the steps of:
offering the user the opportunity to purchase the at least one gardening material.
3. (Previously Presented) The method of claim 1, further comprising the step of displaying a label associated with the gardening material to the user.
4. (Previously Presented) The method of claim 1, wherein the at least one gardening material is identified based at least partially upon the user's response to the querying directed toward the geographic region.
5. (Previously Presented) The method of claim 4, further comprising the step of displaying a label associated with the gardening material to the user, wherein the label varies depending upon the geographic region.

6. (Previously Presented) The method of claim 5, wherein the label is a material safety data sheet.
7. (Previously Presented) The method of claim 5, wherein the label is a label applied to the gardening material for retail sales.
8. (Previously Presented) The method of claim 1, wherein the querying a user for at least one geographic region is directed toward the user's geographic region and at least one gardening material is identified based at least partially upon the user's geographic region.
9. (Previously Presented) The method of claim 1, further comprising the steps of:
 - presenting the user with at least one query directed toward the symptoms of a problem observed by the user; and
 - identifying a pest based at least partially upon the user's responses to the inquiry.
10. (Previously Presented) The method of claim 9, wherein the pest is one of insects, fungi, nematodes, snails, slugs, weeds and diseases.
11. (Previously Presented) The method of claim 1, where the gardening material is one of: pesticides, fertilizers and seeds.
12. (Previously Presented) The method of claim 1, further comprising the step of displaying a list of retailers from which the gardening material is available.
13. (Previously Presented) A system for identifying a gardening material, the system comprising:
 - a storage device for storing a database of gardening material;
 - a user input/output device; and
 - a processor connected to the storage device and the user input/output device, the processor being configured to perform the steps of:

presenting a user with at least one inquiry via the user input/output device;
identifying at least one gardening material based upon a response to said inquiry;
wherein at least one inquiry is directed toward the user's geographic region and the at least
one gardening material is identified based at least partially upon the user's geographic region.

14. (Previously Presented) The system of claim 13, wherein the user input/output device comprising a computer including an Internet browser and the user input/output device is connected to the processor at least partially through the Internet.
15. (Previously Presented) The system of claim 13, where the processor is further configured to perform the step of:
offering the user the opportunity to purchase the at least one gardening material.
16. (Previously Presented) The system of claim 13, wherein the processor is further configured to perform the step of displaying a label associated with the gardening material to the user.
17. (Canceled).
18. (Previously Presented) The system of claim 13, further comprising the step of displaying a label associated with the gardening material to the user, wherein the label varies depending upon the user's response to the inquiry directed toward the user's geographic region.
19. (Previously Presented) The system of claim 18, wherein the label is a material safety data sheet.
20. (Previously Presented) The system of claim 18, wherein the label is a label applied to the gardening material for retail sales.

21. (Previously Presented) The system of claim 13, wherein at least one inquiry is directed toward the user's geographic region at least one gardening material is identified based at least partially upon the user's response to the inquiry directed toward the user's geographic region.
22. (Previously Presented) The system of claim 13, wherein the processor is further configured to perform the steps of:
 - presenting the user with at least one inquiry directed toward the symptoms of a problem observed by the user; and
 - identifying a pest based upon the user's responses to the inquiries.
23. (Previously Presented) The system of claim 22, wherein the pest is one of insects, fungi, nematodes, snails, slugs, weeds, and diseases.
24. (Previously Presented) The system of claim 13, wherein the gardening material is one of pesticides, fertilizers, and seeds.
25. (Previously Presented) The system of claim 13, wherein the processor is further configured to perform the step of displaying a list of dealers from which the gardening material is available.
26. (Previously Presented) A method for identifying a garden material comprising:
 - querying a user for a geographic region in which the garden material is to be utilized;
 - receiving the geographic region from the user;
 - querying the user for an object affected by the gardening problem, wherein the object affected by the gardening problem includes at least one of flowers, vegetables, lawn, fruits, trees/shrubs, pets, homes, and pools/spas;
 - receiving the object affected by the gardening problem from the user;

querying the user for a type of gardening problem, wherein the type of garden problem includes at least one of pests, fertilizer need, and information pertaining to seeds; receiving the type of gardening problem from the user; determining whether the type of gardening problem is a pest problem, fertilizer need problem, or information pertaining to seeds; and generating a list of products based partially upon the geographic region.

27. (Previously Presented) The method for identifying a garden material of claim 26, further comprising:

after generating the list of products, querying the user for a product label display; determining whether the product label display is desired; displaying the product label display by geographic region when the product label display is desired; querying the user for product purchase; determining whether the product purchase is desired; adding product to purchase list when desired; determining whether a dealer location is needed, when dealer location is needed displaying the dealer location; querying user for additional problems; and determining whether additional problems exist, when no additional problems exist performing the checkout process.

28. (Previously Presented) The method of claim 1, wherein the geographic region further comprises a state.

29. (Previously Presented) The system of claim 13, wherein the geographic region further comprises a state.

30. (Previously Presented) The method of claim 26, wherein the geographic region further comprises a state.